THE HON'BLE SRI JUSTICE R.SUBHASH REDDY

WRIT PETITION No.25572 of 2000

DATED:12.09.2007

BETWEEN:

Syed Fazaluddin.

..Petitioner.

And

Government of A.P. represented by its Principal Secretary and others.

..Respondents.

THE HON'BLE SRI JUSTICE R.SUBHASH REDDY

WRIT PETITION No.25572 of 2000

ORDER:

This Writ Petition is filed questioning the validity of the order, dated 21.08.2000, passed by the first respondent-Government, in Memo No.87957/ASN.II(2)/99-2.

The petitioner claims to be the absolute owner and possessor of land covered by survey No.798/1, admeasuring Acs.2.34 guntas, situated at Rampur Village in Karimnagar District. It is stated that originally the land belonged to his mother, by name, Ayesha Bee, and her name was shown as pattadar and possessor in the revenue records. She alleged to have gifted the said land to the petitioner by executing a registered gift deed, bearing document No.2507/83, dated 24.06.1983, and based on the said gift deed, his name was mutated in the revenue records and he was shown as pattadar and possessor. According to the petitioner, the pattadar passbook was also issued to him under the provisions of the Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 (for short 'the Act'). When the entries in the record of rights were changed by entering the names of third parties, including that of the second respondent herein, the petitioner filed an application before the Joint Collector, Karimnagar. After conducting a detailed enquiry into the matter, the Joint Collector, by order, dated 08.03.1996, *vide* proceedings No.A5/3683/93, allowed the same, by cancelling the mutation to the extent of Acs.2.11 guntas of land in survey No.798/1 in favour of the second respondent herein and also to the extent of Ac.0.10 guntas of land covered by same survey number in favour of one Gandra Devender Rao, and ordered for correction of entries in the pahani patrikas from the years 1985-86 to 1992-93. Though there is no provision for further appeal/revision before the Commissioner of Appeals, the second respondent preferred an appeal against the order of the Joint Collector, dated 08.03.1996.

In the said revision, the petitioner herein was arrayed as third respondent. The Commissioner, by order, dated 05.11.1999, *vide* proceedings No.P5/1059/97, dismissed the said appeal. Aggrieved by the order of the Joint Collector, as confirmed by the Commissioner, the second respondent has filed further revision before the first respondent-Government. By the impugned order, dated 21.08.2000, *vide* Memo No.87957/ASN.II(2)/99-2, the first respondent-Government has set aside the order of the Joint Collector, dated 08.03.1996, and further directed for issuance of fresh pattadar passbook in favour of the second respondent. This Writ Petition is filed mainly on the ground that the revisional authority has passed impugned order without issuing any notice and opportunity to the petitioner.

This Court at the stage of admission granted interim order, suspending the order of the Government. Though the Writ Petition is of the year 2000, no appearance is made by the second respondent and even no counter-affidavit is filed by any of the respondents.

It is submitted by Sri Bankatlal Mandani, learned Counsel for the petitioner, that the first respondent-Government entertained revision without even impleading the petitioner as party respondent. It is submitted that the cancellation of mutation and correction of entries in the record of rights was ordered by the Joint Collector, on the application filed by the petitioner, after issuing notice to the second respondent and in that view of the matter, if the said order is questioned, the second respondent ought to have impleaded the petitioner as party respondent in the revision filed before the Government. It is further submitted that though the order of the Joint Collector, dated 08.03.1996, is confirmed by the Commissioner, but the said fact is suppressed by the second respondent, in the revision filed before the Government. It is also submitted that the revision itself

is not maintainable and the impugned order is passed without giving any opportunity to put forth the petitioner's case.

On the other hand, it is submitted by the learned Government Pleader appearing for the respondents that the second respondent has purchased the property in question from the decree-holder in O.S.No.133 of 1963. In that view of the matter, there is no illegality in the order passed by the Government.

I have perused the orders, dated 08.03.1996, 05.11.1999 and 21.08.2000, respectively, of the Joint Collector, the Commissioner, and the Government.

From the perusal of the order passed by the Joint Collector, it is evident that the said order is passed on the application filed by the petitioner for rectification of entries in the pahani patrikas, duly giving notice to the second respondent and also after calling for a report from the Revenue Divisional Officer. As against the said order, though there is no provision for revision under the Act, but, the revision, filed by the second respondent, under Section 158 of the Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 Fasli, was entertained by the Commissioner. Even, the said revision ended in dismissal by his order, dated 05.11.1999. The matter was carried in further revision before the Government. The Government entertained the revision and passed the impugned order, without even issuing notice to the petitioner. A perusal of the order passed by the Government would show that the petitioner is not a party respondent to the revision. In any event, there is also no indication of issuing any prior notice and opportunity to the petitioner before passing the order. In spite of specific allegations of the petitioner, in the affidavit filed in support of the Writ Petition, there is no counter-affidavit by respondents 1, 3 and 4. So far as the second respondent is concerned, in spite of service of

notice, there is no appearance and no counter-affidavit.

The specific allegation of the petitioner that no notice was issued to him before passing the order is evident from the very order itself. However, while setting aside the order of the Joint Collector, dated 08.03.1996, the Government ought to have issued notice to the petitioner by impleading him as party respondent to the revision. There is gross violation of principles of natural justice, while passing the impugned order. Hence, on this short ground, the impugned order, dated 21.08.2000, is liable to be set aside.

Accordingly, the Writ Petition is allowed. The impugned order, dated 21.08.2000, is set aside and the matter is remitted to the Government for fresh consideration and the petitioner shall stand impleaded as party respondent in the revision filed by the second respondent. The Government to issue notice to the petitioner and also to the second respondent and pass appropriate orders as expeditiously as possible, afresh. It is left open for the parties to put forth their cases before the Government. No order as to costs.

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R.SUBHASH REDDY, J

Dt.12.09.2007
GJ